In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 1042 of 2002 (S/B)

Bhuwaneshwar Arya, S/o Late Nain Ram Arya
R/o Village Bagar Talla, Post, Pangoot,
District Nainital (Uttaranchal) …Petitioner.

Versus

1- Union of India through Secretary (Post)
Ministry of Communication, New Delhi.
2- Chief Postmaster General, Uttaranchal
Circle, Dehradun.
3- Director, Postal Services, Bareilly.
4- Senior Superintendent of Post Offices,
Kumaun Division, Nainital, Uttaranchal.
5- Branch Postmaster, Head Post Office,
Mallital, Nainital Uttaranchal … Respondents.

Sri Kishore Kumar, learned counsel for the petitioner.
Sri Suresh Mishra, learned S.C. for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 27-03-2006

By way of the present writ petition, the petitioner has sought the following relief:-

(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned punishment order dated 02-08-1988, passed by the Senior Superintendent of Post Officers, Nainital (contained in Annexure-9 to the writ petition).

(ii) To issue a writ, order or direction in the nature of certiorari quashing the order dated 30-5-2001, passed by the Director, Postal Services, Uttaranchal Circle, Dehradun (contained in Annexure-12 to the writ petition).

(iii) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 17-9-

2001, passed by the Central Administrative tribunal in Original Application No. 2447/2001, Bhuwaneshwar Arya Versus Union of India and others (contained in Annexure -14 to the writ Petition).

(iv) To issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner to the post of Postal Assistant treating him in continuous service w.e.f. 18-4-1981 with all consequential service benefits.

(v) To issue a writ, order or direction in the nature of mandamus commanding the respondents to sanction leave to the petitioner on the medical ground w.e.f. 11.1.1988 to 13.7.1994, beside the cost of this writ petition.

2- As per the petition, the facts of the case are that the petitioner was appointed as a Lower Division Postal Clerk in the Postal Department on 18-4-1981 on the compassionate ground under Dying in Harness Rules. The petitioner discharged his duties upto 11.1.1988 and on 11.1.1988 he became seriously ill and lost his mental balance and left his working place. On 14-4-1993 he regained his mental normalcy and found him admitted at “Get Well Nursing Home” Haldwani. On 14-4-1993 when the petitioner reached at Tallital, Nainital, his fellow colleagues at Tallital Post Office apprehended him and informed the Police about his presence in the city and he was arrested by the police on 14-4-1993 and sent to jail where he was detained upto 26-6-1993. On 26-7-1988 the mother of the petitioner made a representation to the Postmaster General requesting therein that the action be taken in the matter of disappearance of her son (petitioner). As per the petition the petitioner was arrested in a criminal case crime No. 13/90 U/S 409 I.P.C. with an allegation that during the period from 17-9-1987 to 11-1-1988 the petitioner had manipulated certain postal items and embezzled the government money. According to the petitioner, the case U/S

409 I.P.C. was ended into his acquittal on 20-9-1999. The petitioner after recovering from his ailment on 14-7-1994 submitted his joining report along with the fitness certificate, but did not get any response from the authorities, though he attended his office every day. On 25-7-1994 he was informed by the Superintendent of Post Offices that he has been removed from service vide Office Memo dated 02-08-1998, as such the medical certificate dated 13-7-1994 with effect from the period 11.1.1988 to 13.7.1994, submitted by the petitioner, was not acceptable.

3- The petitioner preferred an application before the Central Administrative Tribunal Circuit Bench, at Allahabad against the removal order dated 2-88-1988 and that application was disposed of by the Tribunal vide order dated 31-10-2000 (Annexure No. 10 to the writ petition) with the finding that the petitioner may file statutory appeal before the next higher authorities against the punishment order. The petitioner thereafter filed a statutory appeal before the Director Postal Services, Uttaranchal, but his statutory departmental appeal was dismissed vide order dated 30-5-2001, (Annexure No. 12 to this writ petition). The petitioner feeling aggrieved by the aforesaid order dated 30-52001, passed in the departmental appeal, again preferred an application before the Central Administrative Tribunal, Principal Bench, New Delhi and the Central Administrative Tribunal also dismissed his application vide order dated 17-9-2001 (Annexure No. 14 to the writ petition) by holding that the disciplinary proceeding suffers from no defect as such no interference is required in the matter. Feeling aggrieved by the aforesaid orders passed in the departmental appeal as well as by the Central Administrative Tribunal, the petitioner has preferred present writ petition before this court.

4- The counter affidavit has been filed by the Senior Superintendent of Post Offices, pleading therein that repeated notices were sent to the address of the petitioner, but no reply was received till 16-3-1988. Therefore, under Rule- 14 the charge sheet was issued to the petitioner on 5-4-1988, but it was

also received back as un-served. Thereafter, the Inquiry Officer was appointed on 28-4-1988 and again the copies were sent to the petitioner, but this also undelivered and received back on 9-5-1988 as un-served. It has also been pleaded in the counter affidavit that the petitioner submitted a medical certificate of fitness dated 13-7-1994, but he was informed that he had already been removed from the service on 2-8-1988, therefore the medical certificate dated 13-7-1994 w.e.f. 11.1.1988 to 13.7.1994 was not acceptable. It has also been pleaded in the counter affidavit that the petitioner has absented willfully and he never gave any information to the department.

5- Rejoinder affidavit has been filed by the petitioner, reiterating the facts mentioned in the petition.

6- We have heard the learned counsel for the petitioner, learned Standing Counsel and perused the record.

7- Before hearing the learned counsel for the parties, we also directed the Standing Counsel to produce the original record of the department pertaining to the present case in order to see the correct position of the case. The record shows that the Inquiry Officer has sent several notices to the petitioner to enable him to participate in the inquiry but the same could not be served upon him, as he was not available. The Inquiry Officer therefore conducted the exparte inquiry and found that the charges levelled against the petitioner were proved. Based on the report of the Inquiry Officer, the Disciplinary Authority vide order dated 2-8-1988 determined the penalty of removal from service against the petitioner. The appeal filed by the petitioner before the Director, Postal Services has also been dismissed, vide order dated 30-5-2001. The original record summoned from the department shows that the petitioner submitted the medical certificate from a private Nursing Home “Get Well Nursing Home” Haldwani showing his ailment as “anxiety and depression”. This medical certificate shows that

the petitioner had been under treatment of one Dr. R.C. Agarwal and was advised rest from 11-1-1988 to 13-7-1994.

7- The assertions made by the petitioner in his writ petition are full of contradictions and are not liable to be accepted as in case if the petitioner fell ill, then there was no reason for him not to communicate the department with regard to his illness. As per the own admission of the petitioner, he was in jail from 15-4-1993 to 26-6-1993 but he has never intimated the department in this regard. Again as per the own admission of the petitioner he was declared mentally fit as found by the Senior Superintendent, B.D. Pandey Hospital, Nainital and as such he was released on bail on 26-6-1993 by the Chief Judicial Magistrate, Nainital, but on the contrary the petitioner has submitted his medical certificate of "Get Well Nursing Home" Haldwani for the period 11-1-1988 to 13-7-1994, which includes the period of his detention in jail as well as the period when he would have been under the treatment of the said doctor of B.D. Pandey Hospital, Nainital. In the light of the aforesaid observation, it appears to us that the medical certificate submitted by the petitioner before the department, is not a genuine document and the story with regard to his ailment for the period from 11-1-1988 to 13-7-1994 cannot be accepted.

8- On a careful consideration of all the circumstances available on the record of the case, it is clear that the petitioner has failed to put forth any convincing arguments against the punishment awarded by the competent Disciplinary Authority. He has come forward with vague and contradictory statements which are not based on any reliable evidence. Accordingly we do not find any ground for interfering in the impugned punishment order dated 2-8-1988, as well as the order dated 30-5-2001 passed by the Director, Postal Services, Uttaranchal, dismissing the appeal of the petitioner and the order dated 17-9-2001 passed by the Central Administrative Tribunal.

9- The petition lacks merit and is liable to be dismissed.

10- Accordingly the writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB